

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

|                                 |                                    |
|---------------------------------|------------------------------------|
| IN THE MATTER OF:               | ADMINISTRATIVE CONSENT ORDER       |
| <b>WEST CENTRAL COOPERATIVE</b> | NO. 2011-AQ- 11<br>NO. 2011-SW- 12 |

TO: West Central Cooperative  
Jeff Stroborg, Registered Agent  
406 1<sup>st</sup> Street  
Ralston, Iowa 51459

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and West Central Cooperative for the purpose of resolving violations pertaining to open dumping and open burning of trade waste. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bill Gross  
Iowa Department of Natural Resources  
Field Office No. 5  
407 SW 7<sup>th</sup> Street, Suite 1  
Des Moines, Iowa 50309-4611  
Phone: 515/725-0268

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-6243

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the

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Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. West Central Cooperative has a grain storage elevator business located at 29 Beech Street, in Boxholm, Boone County, Iowa. On July 1, 2010, DNR Field Office No. 5 received a report that West Central Cooperative had burned down a storage building east of the elevator. The smoke was reported to be dense and no fire department personnel were present.

2. Bill Gross of DNR Field Office No. 5 investigated on July 7, 2010. At the time of the visit, the area east of the elevator was leveled and graded. Some charred building remains of the building could be seen. While at the site, Mr. Gross spoke to Harold Olson of West Central Cooperative, and Mr. Olson reported that five buildings had been burned with the permission of Boxholm city officials. Mr. Olson also reported that the ashes had been hauled to a quarry by Hamilton Ready Mix of Jefferson, Iowa.

3. On July 7, 2010, Tom Mowrer of West Central Cooperative contacted Mr. Gross by phone and agreed to remove the ashes from the quarry and take them to a permitted disposal site.

4. A Notice of Violation (NOV) letter was issued to West Central Cooperative on July 8, 2010, stating that ashes located at the quarry should be taken to a permitted landfill and that a copy of the landfill receipts should be sent to DNR. According to landfill receipts subsequently submitted to DNR, nearly 50 tons of wastes were taken to the Boone County Sanitary Landfill on July 17, 2010.

5. West Central Cooperative has a past history of illegal open burning and illegal open dumping. A June 12, 2000, Notice of Violation letter was issued by DNR to West Central Cooperative for open dumping and open burning lumber, railroad ties and miscellaneous solid waste at its property located in Audubon, Iowa.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of

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air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The open burning of trade waste by West Central Cooperative demonstrates violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of trade waste by West Central Cooperative demonstrates non-compliance with this provision.

**V. ORDER**

THEREFORE, DNR orders and West Central Cooperative agrees to the following:

1. West Central Cooperative shall pay a penalty of \$7,945.64 within 45 days of the date this order is signed by the Director; and
2. West Central Cooperative shall immediately discontinue improper open dumping and improper open burning of solid waste, including trade waste, and other materials at any location in the State of Iowa; and West Central Cooperative shall comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$7,945.64 is assessed by this administrative consent order. The penalty must be paid within 45 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of

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up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307 (3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – West Central Cooperative has achieved an economic benefit from open burning and improper waste disposal. It has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the demolition waste from this site. The amount of \$1,731.88 was spent at the Boone County Landfill to dispose of the ashes that had been dumped at a quarry. Assuming three-quarters of the building materials were burned, \$5,195.64 of landfill costs were avoided. Adding in additional labor and transportation costs to get the waste to the landfill, an estimated \$2,000 of additional cost was avoided. This would lead to an estimated cost savings of about \$7,195.64. Therefore, a penalty of \$7,195.64 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. Substantial penalties are authorized by statute. Despite the high penalties authorized, DNR has determined that the most equitable and efficient means of resolving the matter is through an administrative consent order. Failure to properly dispose of solid waste materials threatens the integrity of the regulatory program. The open burning of solid waste can release toxins that pollute the air and may pose a risk to human health and the environment. Improper open burning of commercial buildings can degrade air quality in the immediate area, and dumping ashes in a quarry can contaminate surface and ground water. Therefore, \$500.00 is assessed for gravity of violation.

Culpability – West Central Cooperative has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Further, the open burning of trade wastes has been prohibited for decades. Also, West Central Cooperative was informed of the state open burning and solid waste disposal regulations in a Notice of Violation letter issued by DNR FO4 in 2000. Therefore, \$250.00 is assessed for this factor.

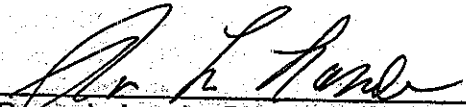
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**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of West Central Cooperative. For that reason, West Central Cooperative waives its rights to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
Roger L. Lande, Director  
Iowa Department of Natural Resources

Dated this 31st day of  
April, 2011.

  
AUTHORIZED AGENT  
West Central Cooperative *EAP-Operations*

Dated this 14th day of  
April, 2011.

Boone County Air Quality file; Anne Preziosi; DNR Field Office 5; VII.C.2